

INSPECTOR GENERAL



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## **NATIONAL LABOR RELATIONS BOARD**

WASHINGTON, DC 20570

I hereby submit this Semiannual Report: April 1 — September 30, 2004, which summarizes the major activities and accomplishments of the Office of Inspector General (OIG) of the National Labor Relations Board (NLRB or Agency). The submission of this report is in accordance with the Inspector General Act of 1978, as amended (IG Act). Section 5 of the IG Act requires that the Chairman transmit this report to the appropriate committees or subcommittees of the Congress within 30 days of its receipt.

In the audit program, OIG issued two audit reports and one inspection report. In the investigations program, OIG processed 92 contacts, initiated 5 cases, and closed 13 cases. The investigations resulted in six administrative actions and \$347 in investigative recoveries. We reviewed seven pieces of legislation. Details on these accomplishments can be found in the body of this report.

During this period, OIG devoted significant attention to the administration of the Agency with particular attention to information systems security matters. We reached agreement with the Agency on actions needed to implement the 15 recommendations made in our review of the Agency's information systems security. We initiated and completed an Inspection of Software Licensing Agreements and found unauthorized software on half of the computers tested. In that inspection report we made suggestions that could lead to \$28,400 in annual savings to the Agency. We reviewed the timeliness of personnel actions and found that the Agency, in the majority of instances, met the processing timeframe set forth in Agency and the U.S. Office of Personnel Management guidelines. We also continued our investigative efforts to ensure the integrity of the Agency's transit subsidy program and compliance with the Internet access policy against viewing sexually explicit material.

I appreciate the support of all Agency employees in achieving the accomplishments set forth in this report.

A handwritten signature in black ink, reading "Jane E. Altenhofen". The signature is written in a cursive style.

Jane E. Altenhofen  
October 29, 2004

## AGENCY PROFILE

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The National Labor Relations Board (NLRB or Agency) is an independent Federal agency established in 1935 to administer the National Labor Relations Act (NLRA). The NLRA is the principal labor relations law of the United States, and its provisions generally apply to private sector enterprises engaged in, or to activities affecting, interstate commerce. NLRB jurisdiction includes the U.S. Postal Service (other government entities, railroads, and airlines are not within NLRB's jurisdiction).

The NLRB seeks to serve the public interest by reducing interruptions in commerce caused by industrial strife. It does this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The NLRB has two principal functions: (1) to determine and implement, through secret ballot elections, the free democratic choice by employees as to whether they wish to be

represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions.

NLRB authority is divided by law and delegation. The five-member Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel investigates and prosecutes unfair labor practices before administrative law judges, whose decisions may be appealed to the Board; and, on behalf of the Board, conducts secret ballot elections to determine whether employees wish to be represented by a union.

The Board consists of the Chairman and four Members who are appointed by the President with the advice and consent of the Senate. Board Members serve staggered terms of 5 years each. The General Counsel is also appointed by the President with the advice and consent of the Senate and serves a 4-year term.

The NLRB has a full complement of five members that includes Chairman Robert J. Battista and Board Members Peter C. Schaumber, Wilma B. Liebman, Dennis P. Walsh, and Ronald E. Meisburg.

The NLRB received an appropriation of \$244,072,983 for Fiscal Year (FY) 2004, less an across-the-board rescission of .59 percent, leaving a net spending ceiling of \$242,632,952 to fund an expected ceiling of 1,875 full-time equivalents. NLRB Headquarters is at 1099 14<sup>th</sup> Street, NW, Washington, DC.

In addition to the Headquarters building, employees are located in 51 field offices throughout the country. Three satellite offices for the Administrative Law Judges are located in Atlanta, San Francisco, and New York. Since October 2, 2000, field offices included 32 Regional Offices, 16 Resident Offices, and 3 Subregional Offices.

Additional information about the NLRB can be found on the Web site [www.NLRB.gov](http://www.NLRB.gov).

## OFFICE OF INSPECTOR GENERAL

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NLRB established the Office of Inspector General (OIG) pursuant to the 1988 amendments to the Inspector General Act of 1978 (IG Act).

### **Resources**

The FY 2004 OIG budget was \$990,700 for operations, of which \$166,000 was for contract services. In addition to the Inspector General, the OIG consists of a Counsel/Assistant Inspector General for Investigations, Assistant Inspector General for Audits, a criminal investigator (position currently vacant), three auditors, and a staff assistant.

The Inspector General is to provide policy direction for and is to conduct, supervise, and coordinate audits relating to program operations of the Agency. *OIG issued two audit reports and one inspection report that identified \$28,400 in costs that could be saved annually.*

### Reports Issued

- We issued Audit Report  
OIG-AMR-42-04-02, *Audit of the  
Timeliness of Personnel Actions*, on  
August 20, 2004. We conducted this  
audit to determine the length of time to  
process various personnel actions.

In the majority of instances, the Human Resources Branch (HRB) completed personnel actions timely, within the 22 days indicated in Agency guidance.

In a few instances, HRB did not process actions in a timely manner. Some actions were completed so late that employee paychecks were affected. Some actions with a "not to exceed" date were not terminated in a timely manner, resulting in overpayments to employees.

Regional Office personnel actions did

not have the proper initiator or authorizer in a few cases. Also, in a few cases, HRB processed some personnel actions without obtaining the necessary Budget and Security concurrence and, in some cases, annotated certificates of eligibles bearing the selecting official's signature were not filed in the merit vacancy files.

In May 2004, the U.S Office of Personnel Management (OPM) asked agencies to begin implementation of a 45-day hiring model for the Federal government. Although some data is not available, the Agency appeared to meet the goal of 45 days from the close of a vacancy announcement to when an offer is made during FY 2003.

Management generally agreed with the recommendations and findings.

- We issued Audit Report OIG-AMR-43-04-03, *Audit of the Archiving of Case Files*, on September 20, 2004. This review was conducted to determine the adequacy of the Agency's record retention policy and practices for case files and ascertain whether the policy was implemented as designed.

Three of the four Regional Offices reviewed generally transferred case files to the Federal Records Centers (FRC) for temporary storage in accordance with the NLRB Records Retention Schedules. One Regional Office and the Case Records Unit did not transfer a significant number of files to the FRC in accordance with these schedules.

The Agency did not perform several required administrative functions. The Agency did not identify vital records, provide necessary training for Record Liaison Officers, evaluate records service vendors before entering into an interagency agreement, and verify cost information on monthly invoices.

Regional Offices generally did not maintain electronic records in a manner and location that would facilitate their reconstruction if the hard-copy records were destroyed.

Management generally agreed with our findings and recommendations.

- We issued Inspection Report OIG-INS-33-04-05, *Inspection of Software Licensing Agreements*, on August 18, 2004. We performed this inspection to determine the adequacy of controls over computer software.

Procurement files lacked justifications, more Microsoft Windows/Office software purchased than needed resulting in \$43,618 in additional cost, and further reductions could be made in software requirements that would save \$28,400 per year. We also found unauthorized software on 45 of 90 computers tested and installation controls not functioning on some computers.

Management generally agreed with the findings and suggestions. Management stated they had been planning to reduce the Microsoft license cost by \$43,618, and would pursue the suggested action to achieve an additional \$28,400 reduction.

#### **Audit Follow-up**

Agreed upon actions were not completed within 1 year on four audit reports, two of which are now closed.

- ***Review of Information Systems Security***, OIG-AMR-30-00-03, was issued on September 29, 2000. We reached agreement with management on actions needed to implement the 15 recommendations made in the report on December 27, 2000. Actions necessary to close this audit were completed by May 12, 2004.

- ***Audit of Agency Leased Vehicles***, OIG-AMR-38-03-01, was issued on January 24, 2003, and we reached agreement with management on actions needed to implement the recommendations on that date. Actions necessary to close this audit were completed by September 17, 2004.

- ***Information Security Review of New Automated Systems***, OIG-AMR-40-03-03, was issued on September 22, 2003, and we reached agreement with management on actions needed to implement the eleven recommendations on that date. Action was completed on 6 of the 11 recommendations. Management is working to implement the remaining recommendations by the end of FY 2005.

## INVESTIGATIONS PROGRAM

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The Inspector General is to provide policy direction for and is to conduct, supervise, and coordinate investigations relating to the programs and operations of the Agency. *OIG processed 92 contacts, initiated 5 cases, and closed 13 cases. The investigations resulted in three suspensions, three counselings, and \$347 in investigative recoveries. One case was referred for prosecution.*

Case Workload		Contacts Processed	
Open (4/1/2004)	13	Received	92
Initiated	5	Initiated Investigation	3
Closed	13	Opened Case -- Referred to Agency	0
Open (9/30/2004)	5	Non-Investigative Disposition	89

- Transit Subsidy Fraud.** As previously reported, the OIG initiated several cases involving the Agency transit subsidy program. During this reporting period, we completed an additional investigation substantiating that an employee improperly received more transit subsidy than the employee was eligible to receive. The amount of the reported overpayment was \$347. The subject received a 3-day suspension that is being held in abeyance provide that she engages in no further misconduct and makes restitution to the Agency. The U.S. Attorney's Office declined prosecution.

For the four cases previously reported, two of the subjects received a 5-day suspension to be served on weekends and two subjects received informal counseling. (OIG-I-350, 351, 352, 354, 355, and 356)

- Education Credentials.** As previously reported, the OIG issued a report involving an employee who stated on her employment application that she expected to complete the degree and then a month later claimed to have completed the degree when she submitted her security background questionnaire to OPM. The background

investigation disclosed that the degree had not been completed. When questioned about this discrepancy, the subject falsely stated that she had completed the course work for the degree.

The Agency referred this matter to OPM for a suitability determination. During this reporting period, OPM found that the subject was not unsuited for Federal employment. The Agency proposed disciplinary action in October 2004. (OIG-I-345)

- **Sexually Explicit Internet Material.** Following a proactive OIG investigative review of the Agency's Internet firewall logs, we initiated an investigation of an employee who was suspected of using the Government computer in his office to view sexually explicit material on the Internet. Using commercially available forensic software, we substantiated the allegation. The Agency is now considering what disciplinary action may be appropriate. (OIG-I-360)

- **Failure to Follow Agency Procedures.** The OIG received an allegation that an office director failed to provide annual performance evaluations to subordinate non-supervisory personnel. When interviewed, the subject acknowledged that he failed to provide timely appraisals for the support personnel under his supervision. The subject acknowledged that he received notices from HR that the appraisals were due, but he denied knowing that he was required to forward the completed appraisals to HR. The Agency resolved this matter by a caution that was transmitted orally to the subject. (OIG-I-357)

- **Labor Relations.** The OIG received an allegation that the Agency negotiated an illegal agreement with a Regional Local of the National Labor Relation Board Union for the requirements of compensatory time in the Region. In this particular case, whether the negotiated terms of the subject agreement fell under 5 USC § 7106(a)(2)(B) as assignment of work or § 7106(b)(2) as a procedure is not a legal

question the answer of which was patently clear. As such, we believed that the Agency was justified in maintaining a good faith legal argument that the provisions of the agreement are procedural and are subject to the collective bargaining process.

(OIG-I-358)

- **Prohibited Personnel Practices.**

As previously reported in October 2000, the OIG received an allegation that a senior management official was the subject of retaliatory personnel action. After reviewing the allegation, we forwarded it to the U.S. Office of Special Counsel (OSC) for review and possible investigation. During this reporting period, OSC completed its investigation and determined that no action was necessary. (OIG-I-275(R))

**Hotline**

Employees and members of the public with information on fraud, waste, and abuse are encouraged to contact OIG. A

log of calls to a nationwide toll free number or the office numbers and a log of mail, e-mail, and facsimile messages are maintained. All information received, regardless of the method used, is referred to as **HOTLINE** contacts.

The information received over the hotline is the basis for the initial review for potential investigations. The information is analyzed to determine if further inquiry is warranted. Most **HOTLINE** contacts are calls from members of the public seeking help on an employment related problem or issues outside OIG and/or Agency jurisdiction. As appropriate, OIG refers these callers to the NLRB office; local, state, or Federal agency; or private resource to provide assistance.

During this reporting period, OIG received 92 hotline contacts, of which 37 were telephone calls and 55 were in writing. Three contacts resulted in OIG investigative cases.

## LEGISLATION, REGULATIONS, AND POLICY

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The Inspector General is to review existing and proposed legislation and regulations relating to programs and operations of the Agency and is to make recommendations concerning the impact of such legislation or regulations. Similarly, we review Agency and OIG policy. *We reviewed seven pieces of legislation and one proposed regulatory matter.*

### Legislation

We reviewed the following legislation and provided input when appropriate.

**S. 2637 and H.R. 4343, the Secret Ballot Protection Act of 2004.** This legislation amends the NLRA to make it an unfair labor practice for an employer to recognize or bargain collectively with a labor organization that has not been selected by a majority of the employees in a secret ballot election conducted by the NLRB; and for a labor organization to cause or attempt to cause an employer to recognize or bargain collectively with a representative that has not been selected in such manner. If signed into law, these amendments would be inapplicable to collective bargaining relationships that were recognized before enactment of this legislation.

### H.R. 2146, the National Labor

#### **Relations Board Ruling Enforcement**

**Act of 2003.** This legislation amends the NLRA to authorize the NLRB to award the employees in a bargaining unit compensation for any delay in bargaining caused by an unlawful refusal by the employer to bargain before entering into the first collective-bargaining contract. The compensation for such delay would be measured by a specified formula involving a statistical compilation of bargaining settlements.

### S. 1925 and H.R. 3619, the Employee

#### **Free Choice Act.**

This legislation would amend the NLRA to require the NLRB to certify a bargaining representative without directing an election if a majority of the bargaining unit employees have authorized designation of the

representative and there is no other individual or labor organization certified or recognized as the exclusive representative of any of the employees in the unit. The legislation also revises enforcement requirements with respect to unfair labor practices during union organizing drives and provides, under injunction provisions, for priority to be given to preliminary investigation of charges of violations by employers or other entities and adds to remedies for violations such as backpay plus liquidated damages and additional civil penalties.

**H.R. 4680, the Tribal Labor Relations Act.** This legislation would amend the NLRA to ensure that Indian tribes and any organizations owned, controlled, or operated by Indian tribes are not considered employers for purposes of jurisdiction of the NLRB.

**H.R. 2204, the Equal Access to Justice Reform Act of 2003.** This legislation eliminates Equal Access to Justice Act's "substantial justification defense" whereby the Government can deny

attorney's fees recovery to prevailing parties if the adjudicative officer of the agency finds that the agency's position was substantially justified; and the rate cap of \$125 per hour on attorney's fees. The legislation also modifies Federal provisions regarding the functions and duties of the Office of Advocacy to include ensuring that the justice system remains accessible to small businesses for the resolution of disputes with the Federal Government.

**H.R. 4754, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005.** In addition to authorizing the appropriations for the specified agencies, this legislation would require that those agencies certify that telecommuting opportunities are made available to 100 percent of its eligible workforce. Of the amount appropriated for each agency, \$5,000,000 will be made available only upon such certification.

**S. 2536, the Homeland Security Civil Rights and Civil Liberties Protection Act of 2004.** This legislation would enumerate the responsibilities of the Officer for Civil Rights and Civil Liberties of the Department of Homeland Security, to require the Inspector General of the Department of Homeland Security to designate a senior official to investigate civil rights complaints.

**Regulations**

The Counsel to the Inspector General is an advisory member of the Agency's Rules Revision Committee that develops changes to Agency procedural regulations. During this reporting period, the committee reviewed a proposed Privacy Act notice for the Agency's Case Activity Tracking System (CATS). Over the past year, the OIG has informally expressed its concern to the Agency regarding the lack of Privacy Act System of Records notice for CATS.

**Policy**

We provided copies of the forms we use to inform employees of his or her rights during an OIG investigation to a PCIE/ECIE working group that is attempting to develop standard forms for the OIG community. This group is coordinating their efforts with the Department of Justice to ensure that employee statements can withstand admissibility challenges during criminal prosecutions.

## LIAISON ACTIVITIES

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The Inspector General is to recommend policies for, and is to conduct, supervise, or coordinate relationships between the Agency and other Federal agencies, state and local governmental agencies, and non-governmental entities. The Inspector General is to give particular regard to the activities of the Comptroller General of the United States. Similarly, we encourage OIG staff members to participate in Agency programs and activities. *OIG staff are active in the inspector general community and Agency functions.*

### **Inspector General Community**

- The Inspector General is a member of the Executive Council on Integrity and Efficiency (ECIE), which consists primarily of the inspectors general at the designated Federal entities in the IG Act. She participated in activities sponsored by the President's Council on Integrity and Efficiency (PCIE), which consists primarily of the Presidentially-appointed inspectors general. She joined the Audit Committee in May 2001.

The Assistant Inspector General for Audits, or designated auditors, participated in the Federal Audit Executives Council (FAEC), Financial Statement Audit Network, Results Act Group, IDEA Users Group, and the FAEC Information Technology Security Committee.

On June 1, 2004, the Counsel and Lead Auditor gave a presentation to the Small Agency Council Finance Committee on meeting the requirements and due dates for an audit of an agency's financial statement. As a result of the Accountability of Tax Dollars act of 2002, Public Law 107-289, many small agencies, including the NLRB, are undergoing the first audit of their financial statements.

The Counsel participated in the Council of Counsels to Inspectors General.

The Counsel and an auditor are members of a PCIE/ECIE committee reviewing issues associated with e-government initiatives and developing recommendations to ensure the reliability and authenticity of electronic data and signatures.

**General Accounting Office**

The IG Act states that each inspector general shall give particular regard to the activities of the Comptroller General of the United States, as head of the General Accounting Office, with a view toward avoiding duplication and ensuring effective coordination and cooperation. No reviews of NLRB are currently ongoing.

## **INFORMATION REQUIRED BY THE ACT**

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Certain information and statistics based on the activities accomplished during this period are required by section 5(a) of the IG Act to be included in the semiannual reports. These are set forth below:

### Section 5(a)

- (1), (2), (7)      OIG did not identify significant problems, abuses or deficiencies relating to the administration of programs. For the purpose of this section, we used the definition of significant as set forth in the Federal Managers' Financial Integrity Act.
- (3)                Corrective action has not been completed on all significant recommendations that were described in the previous semiannual reports.
- (4)                Four cases were referred to prosecutorial authorities. There were no prosecutions or convictions.
- (5)                No reports were made to the Chairman that information or assistance requested by the Inspector General was unreasonably refused or not provided.
- (6)                A listing by subject matter is located on page 16.
- (8), (9)           No audit reports issued during this period had a recommendation on questioned costs. The audit reports did not identify any funds that could be put to better use. See Tables 1 and 2.
- (10)               There are no audit reports issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period.
- (11)               No significant revised management decisions were made during the reporting period.
- (12)               There were no significant management decisions with which I am in disagreement.

## **AUDIT REPORTS BY SUBJECT MATTER**

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<b><u>Report Title and Number</u></b>	<b><u>Questioned Costs</u></b>	<b><u>Unsupported Costs</u></b>	<b><u>Ineligible Costs</u></b>	<b><u>Funds To Be Put To Better Use</u></b>
ADMINISTRATION				
Audit of the Timeliness of Personnel Actions, OIG-AMR-42-04-02	0	0	0	0
Audit of the Archiving of Case Files, OIG-AMR-43-04-03	0	0	0	0

**Table 1****REPORTS WITH QUESTIONED COSTS**

	<u>Number of Reports</u>	<u>Dollar Value</u>	
		<u>Questioned Costs</u>	<u>Unsupported Costs</u>
A. For which no management decision has been made by the commencement of the period	0	0	0
B. Which were issued during the reporting period	0	0	0
Subtotals (A+B)	0	0	0
C. For which a management decision was made during the reporting period	0	0	0
(i) Dollar value of disallowed costs	0	0	0
(ii) Dollar value of costs not disallowed	0	0	0
D. For which no management decision has been made by the end of the reporting period	0	0	0
Reports for which no management decision was made within six months of issuance	0	0	0

**REPORTS WITH RECOMMENDATIONS  
THAT FUNDS BE PUT TO BETTER USE**

**Table 2**

	<b><u>Number of Reports</u></b>	<b><u>Questioned Costs</u></b>
A. For which no management decision has been made by the commencement of the period	0	0
B. Which were issued during the reporting period	0	0
Subtotals (A+B)	0	0
C. For which a management decision was made during the reporting period	0	0
(i) Dollar value of recommendations that were agreed to by management	0	0
(ii) Dollar value of recommendations that were not agreed to by management	0	0
D. For which no management decision has been made by the end of the reporting period	0	0
Reports for which no management decision was made within six months of issuance	0	0



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